

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In The Matter Of	)	
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	)	
Petition for Forbearance From	)	CC Docket No. 03-157
the Current Pricing Rules for the	)	
Unbundled Network Element Platform	)	

**COMMENTS OF WESTERN COMMUNICATIONS, INC. DBA  
LOGIX COMMUNICATIONS ON THE  
VERIZON PETITION FOR EXPEDITED FORBEARANCE**

Howard Siegel  
Vice President of External and Regulatory Affairs  
Logix Communications  
210 Barton Springs Road  
Suite 100  
Austin, Texas 78704  
512/615-4135  
775/854-8107 (fax)  
512/659-7012 (cell)  
howard.siegel@logixcom.com

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On July 3, 2003, the Federal Communications Commission's ("FCC" or the "Commission") released its notice for public comment on Expedited Forbearance Petition of Verizon. On July 15, 2003, the Commission extended the deadline for comments to August 18, 2003 and the deadline for reply comments to September 2, 2003. Logix Communications ("Logix") is a Competitive Local Exchange Carrier ("CLEC") whose offerings include voice and broadband solutions for its customers.

**INTRODUCTION AND SUMMARY**

Logix files these comments in response to the Commission's public notice for comment on the Petition for Expedited Forbearance of the Verizon Telephone Companies ("*Forbearance Petition*" or "*Verizon Petition*") regarding Verizon's newest attempt to block competition by removing UNE-P as a viable CLEC service alternative. In these comments, Logix hopes to shed light on the many false premises raised in the *Verizon Petition*. Of importance, Logix is not a primary UNE-P carrier. Instead, Logix is a focused switch-based provider that utilizes incumbent local exchange carrier ("ILEC") loops, generally at a T1 level, to provide business class voice and data services. Notwithstanding the facilities-based focus of our company,

UNE-P is a necessary method of service delivery for Logix. It cannot be overstated that taken a face value, the Verizon petition would suggest that a company such as Logix would benefit from Verizon's proposal. However, neither Logix nor this Commission is as shortsighted as Verizon hopes. In these comments, Logix attempts to demonstrate that Verizon's arguments, suppositions, and conjectures are not only erroneous but appear to fall within the ILEC game of causing continuing uncertainty and market confusion.

### **I. The Verizon-centric View of the National Economy Lacks Credibility**

Verizon's attempts to equate its corporate interest with the National Economy lack any credibility. Verizon would have this Commission believe that the unbundled network element ("UNE") platform ("UNE-P") is the cause of what ills the national economy. Verizon does not consider speculation on Internet stocks, corporate malfeasance, the terrorist attacks on New York City and Washington D.C., wars in Afghanistan and Iraq, sagging economies in Europe and Japan, or any other factor in the economy. Verizon does not even consider poor domestic and international investments that ILECs engaged in through the end of the last decade. Instead, Verizon tells the Commission that UNE-P is the culprit, and this Commission must forbear from enforcing Verizon's obligations (even before the publication of a triennial review order) to save the National Economy from the UNE-P scourge.

This overblown position on UNE-P is not only absurd, it also is familiar. This is the exact rhetoric Verizon, SBC, and other large ILECs have used in Congress and state legislatures regarding the unbundling of broadband facilities. They have argued that if facilities, such as Next Generation Digital Remote Terminals ("NGDLCs") were free from unbundling obligations, there would be a rebirth of their network expenditures that would help the manufacturing

industry and state/National economies. Now that they have largely won protection from state implementation of the FTA in that regard, they have come up with a new excuse, UNE-P.

To support its National Recession hypothesis, Verizon sites to a small number of carefully selected commentators. These commentators, referred to as independent, generally have long histories of supporting ILEC positions almost across the board. Moreover, many of them earn a substantial portion of their revenues from consulting and other services for ILECs and ILEC interests.

Additionally, Verizon is guilty of very selective use of dates as it quotes contended statistics. Throughout its comments it limits its discussion of the “disaster” of the economy by focusing on investment from 2000 to 2002. Of course, there are many reasons, such as financial market liquidity, that affects investment by ILECs and CLECs alike. What Verizon does not state is that from 1997 through 1999 there was a considerable amount of investment in telecommunications, that this investment took place after the creation of UNE-P, and that there is a market consensus that the latter period of the 1990s was a period of overinvestment in telecommunications causing substantial overcapacity. It is only natural that investment would be curbed while this overcapacity is being absorbed. Moreover, the evidence suggests that quite to the contrary of Verizon’s false contentions, tremendous over-investment has occurred in our industry coincident with the existence of UNE-P rather than underinvestment as Verizon would have this Commission believe.

## **II. Recent State Commission TELRIC Decisions Demonstrate that Verizon and other ILECs have been Overcharging CLECs for Years.**

In a great irony, Verizon contends that recent and numerous cost proceedings across the country that have lowered UNE rates demonstrates that total element long run incremental cost (“TELRIC”) methodology is flawed and has led to Verizon and other ILECs providing UNEs

below cost. Quite to the contrary, the recent state commission proceedings demonstrate that Verizon and other ILECs have been (1) successful in overcharging CLECs for years, and (2) less than forthright when they have suggested to lawmakers that their historic UNE rates were too low.

It has been a continuing policy of the large ILECs to move decision-making further and further away from factual reviews. That ILEC policy has manifested itself in ILEC attempts to take jurisdiction away from the most fact-oriented proceedings, at the state level, to the FCC and their attempts to take FCC jurisdiction away by changing the Federal Telecommunications Act (“FTA”).

To believe the *Verizon Petition*, one would have to conclude that there is a vast conspiracy that has taken over the utility commissions of most of the Verizon states. Moreover, one would have to conclude that those same commissions are all separately choosing to violate the federal law by imposing low rates without regard to the FCC’s pricing methodology. For example, Verizon states “by basing rates on a hypothetical network, TELRIC functions as a ‘black box’: it lacks any objective criteria or standards on which to base rates and accordingly provides considerable latitude to set rates without regard to cost.”<sup>1</sup> Without using the words, Verizon accuses each of the state commissions of fraud and theft with the obvious implication that the states have intentionally manipulated the FCC’s pricing rules to achieve a results-oriented conclusion.

Instead of Verizon’s conspiracy theories, the reasonable conclusion is that when educated and informed decision-makers have an opportunity to review the facts in a detailed and complete manner and subjected to the rigors of a litigated process, nine times out of ten those decision-makers have found that Verizon’s claims have been false and that the rates they have been

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<sup>1</sup> *Verizon Petition* at 2.

charging competitors have exceeded Verizon's costs to a substantial degree.<sup>2</sup>

To date, this Commission has strongly rebuked the attempts by the ILECs to usurp state authority over the unbundled network element platform ("UNE-P"). And, it is rather telling that where the Commission has given the ILECs every opportunity to prove in a factual setting the appropriateness of phasing-out UNE-P by requiring states to, in effect, recertify UNE-P, Verizon has already determined that it cannot win based on the merits in a fact-based proceeding and has restarted the process of removing the issue from such a factual review.

### **III. Even For a Switch-Based Competitor Like Logix, UNE-P is a Necessary Means to Compete with ILEC's on a Ubiquitous Basis**

As stated in the introduction herein, Logix predominantly provides local service with its own switches. Verizon would have the Commission believe that its petition is brought, to a large extent, for the benefit of carriers like Logix. That claim is not correct. Logix is not grateful for Verizon's actions. Instead, Logix recognizes that every CLEC needs access to a number of methods to provide service to customers if those providers can expect to compete with incumbents and have the flexibility to service the telecommunications needs of a diverse customer base. Logix, for example, uses its on Class 5 switches to service its customers. Still, there are many situations when UNE-P is a necessary method of service delivery. The common example is a medium-size business location with satellite offices. Logix is not going to win the corporate headquarters to service on its Class 5 switch if it cannot serve the satellite offices that are not serviceable by that switch. As a result, to win the facility-based customer, Logix must have access to UNE-P to have the necessary ubiquitous coverage to serve all of the customer's needs.

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<sup>2</sup> Verizon also fails to mention that it and the other large ILECs have continued to have the strongest performing publicly traded stocks in the telecommunications sector. This fact demonstrates that investors believe that they continue to be relatively well positioned within the telecommunications marketplace. If Verizon's claims were true, one would expect the stock of UNE-P providers to have been the highest performing stocks in the sector.

The multi-location customer is not new to the industry. And, Verizon's contention that it is seeking rulings that will help carriers like Logix is built on feigned concern. Verizon's attempt to remove UNE-P carriers is an attempt to remove the viability of all competition. By removing UNE-P as a method of service delivery, Verizon not only eliminates the UNE-P competition, but ties a hand behind the back of switch-based providers like Logix by walling off a substantial customer base. Logix not only loses the competitive opportunity to serve these customers, our overall competitiveness is diminished as we lose substantial economies of scale.

Finally and to reiterate, ubiquitous coverage within ones service area is necessary. If there were any carrier that one might suggest would lack the need for such ubiquity, one might consider Logix' profile. Logix has its own switches, is a regional carrier, and primarily serves business customers. Yet, even Logix requires the ubiquitous coverage that UNE-P provides to be competitive. The marketplace is difficult enough given other competitors and the incumbent's leveraging of its inherited customer base to, in Logix' opinion, anticompetitively niche price target CLEC customers. If the FCC allowed Verizon to wall off a large set of customers, the ability of Logix and other carriers to effectively compete will be in doubt.

## CONCLUSION

Logix appreciates the opportunity to provide comment on the *Verizon Petition*. As has been explained throughout, Logix strongly believes that the *Verizon Petition* is without merit and demonstrates Verizon's continued attempts to hide from the facts and the rigorous testing of its position that results during the state arbitration process. If the premise of the *Verizon Petition* were believed, Logix would be supporting that petition rather than opposing it in the strongest terms. Instead, Logix opposes the continuing attempts by the large ILECs to take away each and every viable method of competition on a systematic, method-by-method basis. Logix as a



switch-based carrier cannot compete with an ILEC if it does not have the ability to compete on a ubiquitous basis. As a result, even Logix requires access to UNE-P to compete for multi-location customers. Moreover, Logix is willing to compete with UNE-P carriers in the marketplace without, as Verizon would choose, to have those carriers withdrawn from the marketplace by regulatory fiat.

Respectfully submitted,

LOGIX COMMUNICATIONS

By \_\_\_\_\_  
Howard Siegel  
Vice President of External and  
Regulatory Affairs  
Logix Communications  
210 Barton Springs Road  
Suite 100  
Austin, Texas 78704  
512/615-4135  
775/854-8107 (fax)  
512/659-7012 (cell)  
howard.siegel@logixcom.com

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